IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

OP.No. 13987 of 2003(M)

PETITIONER:

K.V.NAZEEMA, W/O. KUNHADKUTTY HAJI,
PEEDIKA KANDI, PP VII 338 B,
PUZHATHI P.O., KANNUR DISTRICT.

BY ADV. SMT.DAISY THAMPI

RESPONDENTS:
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1. THE DISTRICT COLLECTOR, KANNUR.

2. THE TAHSILDAR, KANNUR.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP23608 OF 2003 IN OP 13987 OF 2003

DISMISSED

11.12.2007 SD/-C.N .RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE BUILDING TAX RECEIPT DATED 26.5.2001

EXT.P2 TRUE COPY OF THE PROCEEDINGS ISSUED BY THE 2ND RESPONDENT DATED 4.5.2002

EXT.P3 TRUE COPY OF RECEIPT DATED 13.5.2002

EXT.P4 TRUE COPY OF THE PLAN APPROVED BY THE SECRETARY, PUZHATHI GRAMA PANCHAYAT DATED 28.3.2000

EXT.P5 TRUE COPY OF THE ORDER DATED 16.10.2002

EXT.P6 TRUE COPY OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT ON 31.3.2003

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 13987 OF 2003

Dated this the 11th day of December, 2007

JUDGMENT

The controversy is only with regard to plinth area of the building for the purpose of assessment of luxury tax. According to the petitioner, plinth area is below the limit that attracts luxury tax under Section 5A of the Kerala Building Tax Act, which is 278.7 sq. metres. Petitioner's case is that plinth area of the building is only 275.78 sq. metres. The difference for liability is little over 2 sq. metres. However, the Tahsildar has assessed the plinth area of the building at 298.41 sq. metres. In the circumstances, O.P. is disposed of directing the Tahsildar to get the plinth area of the building measured by AEE, PWD, who is directed to measure the building after notice to the petitioner and to the Tahsildar, based on request made by the Tahsildar, without any delay. The measurement report will be furnished to the petitioner. If in the measurement by the AEE, PWD, it is found that the plinth area of the building is 278.7 sq.metres or above, then petitioner will be liable to pay cost of Rs. 5,000/- in addition to the tax

payable by the petitioner. Tahsildar is directed to recover the cost of Rs. 5000/- along with tax from the petitioner. However, petitioner is given the option to give up the contest and remit the arrears, if, on measurement by herself, she is satisfied that the plinth area of the building is above 278.7 sq. metres. Petitioner will produce copy of this judgment before the Tahsildar for compliance. If the petitioner wants measurement then recovery of luxury tax will remain stayed until measurement and refixation of liability as above by the Tahsildar, based on measurement report prepared by the AEE, PWD.

(C.N. RAMACHANDRAN NAIR)
Judge